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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION OF )  
THE PARENT CHILD RELATIONSHIP OF )  
L.D. and HIS MOTHER, NATASHA BOWMAN, )  
and HIS ALLEGED FATHER, LARRY DENNISON, )

NATASHA BOWMAN, )  
Appellant-Respondent, )

vs. )

No. 49A02-0609-JV-771

MARION COUNTY DEPARTMENT OF )  
CHILD SERVICES, )  
Appellee-Petitioner. )

and )

CHILD ADVOCATES, INC., )  
Co-Appellee (Guardian ad Litem). )

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APPEAL FROM THE MARION SUPERIOR COURT, PROBATE DIVISION

The Honorable Deborah Shook, Judge  
Cause No. 49D09-0507-JT-26821

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**June 7, 2007**

## **MEMORANDUM DECISION – NOT FOR PUBLICATION**

### **MATHIAS, Judge**

Natasha Bowman (“Mother”) appeals the trial court’s termination of her parental rights with respect to L.D., a minor child. Mother raises two issues, which we restate as:

- I. Whether the evidence is sufficient to support the termination of Mother’s parental rights; and,
- II. Whether the guardian ad litem fulfilled her statutory obligations pursuant to Indiana Code section 31-9-2-50.

We affirm.

### **Facts and Procedural History**

Mother has two children: Z.B. born on October 21, 1999, and L.D. born on August 20, 2004. In 2003, Z.B. was found to be a child in need of services (“CHINS”) and was removed from Mother’s care. Mother eventually consented to Z.B.’s adoption by his foster parents. L.D. was also found to be CHINS and was removed from Mother’s care shortly after his birth. L.D. was placed in foster care with Z.B.

On July 14, 2005, the Marion County Department of Child Services (“MCDCS”) filed a petition to terminate Mother’s parental rights. After several fact-finding hearings were held, the trial court issued its findings of fact and conclusions of law terminating Mother’s parental rights. The trial court found in pertinent part:

4. [L.D.] was removed from the care and custody of [Mother] because [Mother] had serious untreated mental illness, was unable to provide appropriate care for him, and because she was living with his father who was using illegal drugs. During [Z.B.’s] case, [Mother] had been offered services designed to help her gain control of her mental illness and develop the skills that she would need to appropriately parent a child. Those services were not successful. For a period of time after [L.D.’s] birth, [Mother] suffered from the delusion that [L.D.] had a twin whose existence was being hidden from her.

5. [L.D.] has remained outside the care and custody of [Mother] because she continued to lack the ability to care for him and because she refused to engage in services that would have helped her gain control of her mental illness and given her the capacity to develop the necessary parenting skills.
6. Since May of 2003, [Mother] has been ordered to participate in and has been offered the opportunity to participate in services designed to help her stabilize her mental health and gain the parenting skills that she was lacking.
7. During her sons' CHINS cases, [Mother] has undergone at least three psychological and/or psychiatric evaluations that diagnosed serious illness and recommended ongoing treatment.
8. In late 2004 through early 2005, [Mother] engaged in the recommended mental health treatment. During that period of time she demonstrated significant improvement; however she discontinued that treatment against the advice of her treating psychiatrist and regressed. Ultimately little difference was noted in [Mother's] condition in her evaluation performed in the summer of 2003 and the one performed in the spring of 2006.
9. Her psychologist recommended that a responsible adult supervise [Mother] every time she is with [L.D.] until she can demonstrate the ability to cope during stressful times and to utilize good decision-making abilities. [Mother's] visitation never progressed beyond a supervised setting.
10. [Mother] has not maintained consistent employment and has not held a job at all for long periods of time.
11. [Mother] has not maintained her own residence and has instead relied upon a variety of different people to provide housing for her. Some of those people have been abusive towards [Mother].
12. [Mother] was offered home based counseling to help her address her mental health issues, domestic violence, housing, employment and parenting. This process was hindered by [Mother's] lack of participation. The service ultimately ended unsuccessfully when [Mother] moved without providing her counselor with new contact information.

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14. [L.D.] is placed with [Z.B.] in foster care. [L.D.] has been in that home since he first came home for [sic] the hospital after his birth. The children are doing well in that placement. The children have a bond with each other and with their foster parents. The foster parents have initiated adoption proceedings for [Z.B.] and would do the same for [L.D.] if given that opportunity. It would be harmful to [L.D.] to sever these bonds by removing him from his home and his brother.

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16. [L.D.] needs a permanent home with a consistent caregiver who can and will meet his mental, physical and emotional needs. [L.D.] has not lived with his mother [] since his birth nearly two years ago. It would be harmful to [L.D.] to require him to wait any longer for a permanent home.

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19. Given [L.D.’s] need for permanency and need for a stable loving home with a caregiver who can appropriately provide for him and [Mother’s] lack of ability to provide for those needs, it is in the child’s best interest to terminate the parent-child relationship.

Appellant’s App. pp. 10-12. Mother now appeals. Additional facts will be provided as necessary.

### **I. Termination of Mother’s Parental Rights**

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005) (citing Pierce v. Society of Sisters, 268 U.S. 510, 534-35 (1925); Meyer v. Nebraska, 262 U.S. 390, 399 (1923)). “A parent’s interest in the care, custody, and control of his or her children is ‘perhaps the oldest of the fundamental liberty interests.’” Id. (quoting Troxel v. Granville, 530 U.S. 57, 65 (2000)). However, parental interests are not absolute and must be subordinated to the child’s interests in determining the proper disposition of a petition to terminate parental rights. Id. (citing In re D.D., 804 N.E.2d 258, 265 (Ind. Ct. App. 2004), trans. denied). “Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities.” Id.

When we review the termination of parental rights, we do not reweigh the evidence or judge witness credibility and we may consider only the evidence and reasonable inferences that are most favorable to the judgment. Id. In addition, when reviewing findings of fact and conclusions of law entered in termination cases, we apply a two-tiered standard of review. First, we determine whether the evidence supports the

findings, and second we determine whether the findings support the judgment. Id. We will set aside the trial court's judgment only if it is clearly erroneous. Id. (citing In re Wardship of B.C., 441 N.E.2d 208, 211 (Ind. 1982)). If the evidence supports the trial court's decision, we must affirm. In re T.F., 743 N.E.2d 766, 773 (Ind. Ct. App. 2001), trans. denied.

To effect the involuntary termination of a parent-child relationship, the MCDCS must establish that:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
  - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made;
  - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;
  - or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interest of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2) (1998 & Supp. 2006). These elements must be proved by clear and convincing evidence. Ind. Code § 31-34-12-2 (1998).

First, Mother argues that the trial court's findings that she had an untreated mental illness, which affected her ability to care for L.D. and her ability to cope with stress, are not supported by the evidence. Dr. Madhu Rao diagnosed Mother as having bipolar

disorder, which if left untreated would “definitely” affect an individual’s ability to function. Tr. p. 151. Specifically, Dr. Rao testified that if Mother was not treated “she would not be able to function well even for herself let alone anyone else.” Tr. p. 161.

Dr. Mary Papandria completed psychological testing of Mother in 2003 and 2006. Her testing revealed that Mother “was showing evidence of Schizoaffective Disorder,” which is a psychotic disorder where “the individual shows evidence of some psychotic features as well as depression and/or anxiety symptoms.” Tr. pp. 601-02. She also testified that Mother “had mild paranoia, some mild grandiose delusions and some mild symptoms of depression.” Tr. p. 602. Dr. Papandria stated that Mother “would be able to function fairly well” with medication and treatment. Tr. p. 603.

After the 2006 evaluation, Dr. Papandria concluded that Mother “appears marginally competent to make decisions regarding the welfare of her children. She continues to show evidence of psychological disturbance including possible Schizoaffective disorder, history of depression, and personality features that may interfere with her parenting abilities, particularly under times of stress.” Ex. Vol., Petitioner’s Ex. 99, p. 149. Moreover, Dr. Papandria recommended that Mother “should be supervised by another responsible adult every time she is with her children until she demonstrates ability to cope during stressful times and to utilize good decision-making abilities.” Id. Dr. Papandria reached these conclusions based on her psychological testing of Mother, Mother’s continued denial of any mental illness, and therefore lack of treatment, and her lack of consistency in her behavior. Tr. pp. 614-15. Finally, Dr. Papandria stated that without treatment and medication, if L.D. were returned to Mother,

she would be “very concerned” because Mother is “showing significant psychological disturbance.” Tr. p. 625. This evidence supports the trial court’s findings concerning Mother’s mental illness and ability to care for L.D.<sup>1</sup> Mother’s argument to the contrary is simply a request for our court to reweigh the evidence, which we will not do.

Next, Mother argues that the trial court’s findings concerning her inability to maintain consistent employment and housing were not supported by the evidence. Mother was unemployed between the fall of 2004 and August of 2005. Tr. p. 24. Since that time, she has been employed in various positions with many different employers for short periods of time. She has also lived in various residences in different cities with relatives, roommates or L.D.’s father. Although at the time of the termination hearings Mother had resided with her uncle for several months, Mother’s pattern of behavior demonstrates her inability to maintain consistent housing and employment. Therefore, the trial court’s findings are supported by the evidence.

We also reject Mother’s assertion that the trial court’s finding that Mother did not adequately participate in home-based counseling is not supported by the evidence. Mother’s home-based counselor testified that Mother failed to successfully complete services, failed to provide accurate information to her and failed to attend therapy as recommended. Tr. pp. 321-23, 326. Mother moved in March of 2005 and failed to provide any contact information to her counselor, and therefore, they had no further

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<sup>1</sup> Mother also contests the trial court’s finding that she suffered from the delusion that L.D. had a twin. Again, Mother’s argument amounts to a request that we reweigh the evidence and credibility of the witnesses. Mother denied suffering from this delusion at the termination hearing. However, Dr. Rao testified that Mother seemed to believe that she had twins and one twin had been abducted. Tr. p. 153. Mother also told her home-based counselor and her family case manager that she thought she had given birth to twins. Tr. pp. 314-15, 461.

contact. Mother also failed to maintain consistent contact with her family case manager. Her visitation with L.D. was suspended for approximately four months because she missed three visits in May of 2005. Tr. p. 466. Mother's visitation with L.D. resumed in August of 2005 after she contacted her case manager, but Mother has never been allowed unsupervised visitation with L.D. Tr. p. 468.

Next, Mother argues that the evidence does not establish that the conditions resulting in L.D.'s removal have not been remedied and that the continuation of the parent-child relationship poses a threat to L.D.'s well-being. However, because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find one of the two elements by clear and convincing evidence. Bester, 839 N.E.2d at 148 n.5.

As discussed above, L.D. was removed from Mother's care because she has a serious mental illness for which she refuses to seek treatment on a consistent basis. While mental illness by itself is not a proper ground for terminating parental rights, "where [] the parents are incapable of or unwilling to fulfill their legal obligations in caring for their children, then the mental illness may be considered." Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Both Dr. Rao and Dr. Papandria testified that Mother lacks the ability to function and to care for L.D. if she does not receive treatment for her illness. Mother's case manager testified that several incidents caused her to have concern for Mother's mental health. Tr. p. 471. These included Mother's belief that she gave birth to twins and one twin had been abducted, Mother's belief that she could show up at a visitation and take her children home, and Mother's general confusion and inability to understand why she



could not have visitation with her children. Tr. pp. 471-72. Because Mother denies having a mental illness, she refuses to seek treatment and/or take medication.

As we have so often stated, the purpose of terminating parental rights is not to punish parents, but to protect children. In re A.I., 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), trans. denied. The termination of a parent-child relationship is proper where the child's emotional and physical development is threatened, and a trial court need not wait until the child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the relationship. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). "It is undisputed that children require secure, stable, long-term, continuous relationships with their parents or foster parents. There is little that can be as detrimental to a child's sound development as uncertainty." Baker v. Marion County Office of Family and Children, 810 N.E.2d 1035, 1040 (Ind. 2004) (citation omitted).

Mother's psychologist, psychiatrist, home-based counselor and family case manager were all concerned with Mother's ability to function and her ability to care for L.D. because of her mental illness and her unwillingness to be treated for that illness. Moreover, Mother's most recent evaluation by Dr. Papandria in 2006 established that her ability to function and care for L.D. has not improved.

Finally, Mother asserts that the plan of adoption is "not acceptable or in L.D.'s best interest." Br. of Appellant at 21. At birth, L.D. was placed with his brother's foster family. The foster family has expressed its desire to adopt L.D. and his brother. L.D. is

doing well in that placement and has bonded with his foster family. It is difficult to imagine a plan that could be more acceptable or more in L.D.'s best interest than this.

For all of these reasons, we conclude that the evidence supports the trial court's determination that the conditions that resulted in L.D.'s removal have not been remedied, that there is a satisfactory plan for the care and treatment of L.D., and that termination of Mother's parental rights is in L.D.'s best interests.

## **II. Performance of the Guardian Ad Litem**

Mother also asserts that she "was denied due process when the [g]uardian ad [l]item's office failed to properly fulfill its statutory duties to independently represent and advocate for the best interest of the child throughout the case." Br. of Appellant at 25. Specifically, Mother argues that the guardian ad litem ("GAL") failed to represent L.D.'s best interests because she never witnessed a visit between Mother and L.D., never interviewed Mother, and never investigated Mother's support system.

"The purpose of appointing a GAL is to represent and protect the best interests of the child and to provide the child with services requested by the court such as researching, examining, advocating, facilitating, and monitoring the child's situation." In re J.C., 735 N.E.2d 848, 849 (Ind. Ct. App. 2000) (citing Ind. Code § 31-9-2-50 (1998 & Supp. 2006)).

At the termination hearing, the GAL testified that she reviewed the Child Advocates case file, interviewed the foster parents and other children living in the foster home, including Z.B. She also observed and interacted with L.D. She discussed the case with the case manager, reviewed court filings, case manager reports, and reports from

L.D.'s therapist. Tr. p. 77. The GAL had five visits with Z.B. and visited with L.D. "twice in the last six months." Tr. p. 78. The GAL testified that L.D. is doing "very well" in his foster placement, has a "good relationship" with the foster parents, Z.B. and his foster siblings. Tr. p. 80.

The GAL did not have any contact with Mother, except for contact at court hearings. She testified, "It's not been recommended to me to speak with her because we usually have that happen at the point where home-based counseling is started." Tr. p. 83. The GAL then stated that she never received any information indicating that home-based counseling had been started. Id. The GAL never witnessed any visits between L.D. and Mother, but reviewed records pertaining to visitation. Tr. p. 84. At the hearing, the following exchange occurred concerning the GAL's lack of contact with Mother:

COUNSEL: I'm just curious because without having any interaction with the mom, how do you know that [L.D.] wouldn't be better off with the foster parents than with [Mother]?

GAL: Well based on what I've been told and what I have read up to this point with [Mother] not having completed the services, then she's not shown herself to be the best place for the child.

Tr. p. 96.

"The GAL is appointed to protect the interests of the child." In re A.L.H., 774 N.E.2d 896, 901 (Ind. Ct. App. 2002). While we cannot agree with Mother's assertion that the GAL's performance was inadequate in this case, her argument is not wholly without merit. The GAL may have performed her statutory duties as enumerated in Indiana Code section 31-9-2-50, but the fact that she did so without any contact with Mother is troubling. However, the GAL's lack of contact with Mother and failure to observe any interaction between L.D. and Mother simply reflects on the weight to be

assigned to her testimony concerning the best interests of the child. We therefore reject Mother's argument that the GAL failed to perform her statutory duty to advocate for L.D.'s best interests.

### **Conclusion**

The evidence supports the trial court's findings that the conditions that resulted in L.D.'s removal have not been remedied and that termination of Mother's parental rights is in L.D.'s best interests. Moreover, the GAL adequately performed her statutory duty to advocate for L.D.'s best interests.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.